Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 18th September, 2003, (Bhadra 27, 1925)

SERIES II No. 25

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/98/457

The following Award dated 6-1-1999 in Reference No. IT/25/86 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex Officio Joint Secretary (Labour).

Panaji, 21st January, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/25/86

Workmen
Rep. by Oxygen & Aerated
Waters Workers' Union,
Margao-Goa. — Workmen/Party I

V/s

M/s. Crunet Aerated Waters Pvt. Ltd.,
P. O. Box 286,
Margao-Goa. — Employer/Party II

Workmen/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 6-1-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order dated 26th September, 1986 bearing No.28/21/86-ILD referred the following dispute for adjudication by this Tribunal.

"Considering the facts that the Management of M/s. Crunet Aerated Waters' Private Limited, Margao, Salcete-Goa, re-opened their factory in November, 1984 whether their action in refusing employment to 11 workmen whose services were earlier terminated on the grounds of closure of establishment is legal and justified?

If not, to what relief the workmen are entitled to?"

2. On receipt of the reference a case was registered under No. IT/25/86 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Union") filed statement of claim which is at Exb. 2. The facts of the case in brief as pleaded by the Union are that the Employer-Party II (for short, "Employer") is a Private Limited Company incorporated in Goa under the Companies Act and was started by one Cruz Fernandes somewhere in the year 1961. That the employer-company started dealing with the products of beverages like orange, mangola, lime, ginger and soda. That somewhere in the year 1976 said Mr. Cruz Fernandes sold the company to the House of Govind Poy. That for the first time in the year 1981 the workers formed themselves into union and sent a letter dated 20-11-1981 to the management informing about

formation of the union of the workers. That on receipt of the said letter the employer served a notice of termination of service on the workman Shri Ramesh Naik and his termination is illegal and unjustified. The Union raised the dispute and subsequently the said dispute was referred to this Tribunal for adjudication and it was registered as case No. IT/26/82. That with a view to harass and coarse the workers the employer terminated the services of Smt. Luiza Morais, Anita Sakhalkar and Kamal Ugvenkar and the dispute as regards their termination of service was referred to the Tribunal by the Government and it was registered as Case No. IT/46/82. That in the meantime on 30-12-81 the union served charter of demands on the employer and upon failure of conciliation proceedings held by the Labour Commissioner the Government referred a dispute to the Tribunal for adjudication. That since various issues of dispute between the management and the workmen were not being settled, the workmen resorted to strike from 25-3-82 which was subsequently withdrawn from 15-6-83. That in the meantime on 29-5-82 the employer announced that they had closed the business and all the workmen were retrenched w.e.f. that date. The Union contended that the employer infact had not closed the business and the alleged retrenchment was illegal and unjustified. That on 23-2-84 the employer published a notice in the news paper stating that the employer had decided to re-start the activities of the company and the workers who were retrenched on account of the closing down of the factory w.e.f., May 1982 would be given preference in employment and that they should make an application for employment within 8 days from the date of publication of the notice. That all the workmen wrote letters to the employer on 28th February 1984 showing willingness to report for duty without prejudice to their rights and contentions of the Union in reference case No.IT/59/82 and they further requested the employer to intimate to them the date and the time on which they should report for work. That the employer addressed letters to the workmen Shri Pedro Rodrigues, Chandrakant Fondekar, Dattatraya Vazarkar, Prakash Nanu Naik, Luiza Gomes, Hirabai V. Sawant, Sharad R. Chari, Shrimati Vassudev Borkar, Vishranti D. Pawar and Miss Magdelena D'Souza, dated 27-9-84 which were termed as offer of appointment and asking the workmen to report for work within 7 days from the date of receipt of the said letters. That the union by letter dated 19-11-84 informed the employer that they do not accept the letters termed as 'offer of appointment' since they had been appointed and were serving the establishment much prior to January, 1980. That by letter dated 20-11-84 the management alleged that the offer of appointment was under rule 78 of the Industrial Disputes Act, 1947 and since the workmen had failed to report within the specified period the employer presumed that the workmen were not availing the opportunity of preference in service given to them. That immediately on receipt of the letter of offer of appointment the workmen went to the factory premises and the watchman on duty informed that he had been instructed not to allow any workman in the factory and this fact was intimated by the union to the employer by letter dated 22-11-84. The Union contended that there was no closure of the establishment as stated by the employer and termination of the service of the workmen from 29-5-82 is illegal and unjustified. The Union further contended that even if it is admitted that there was a closure, since the employer reopened the factory and restarted the production the employer was legally bound to absorb the workmen who were on the roll of the company at the time of closure. The Union stated that all the 11 workmen were always willing and are still willing to report for work. The Union contended that the action of the employer in refusing employment to the 11 workmen is illegal and unjustified and they are entitled to be taken back in employment at least from the date of re-opening of the factory i.e from the month of November 1984.

3. The employer filed the written statement which is at Exb. 3. The employer stated that the reference is not maintainable because (a) the Government did not apply its mind while making the reference, (b) the workmen having refused employment have no right to claim employment again, (c) once it is admitted that the factory was closed no right exists with the workmen for re-employment, (d) since the employer has employed new employees they should be given an opportunity of being heard as their right would be directly affected by virtue of the reference. The employer stated that from the year 1981 the machinery installed by them at Malbhat, Margao, was going out of order due to frequent breakdowns in the same and its equipment due to which the factory had to be stopped very frequently and on account of such frequent breakdowns repairs had to be carried out frequently causing considerable expenditure to the employer. The employer stated that they decided to consult experts and accordingly M/s Ahura Engineering Works Bombay visited the factory in the beginning of the year 1982 and after surveying the factory, recommended the immediate overhauling of the plant and machinery and replacement of major equipment and re-alignment of the plant and machinery. The employer stated that since the plant and machinery was required to be dismantled for the purpose of repairs and the employer did not know how much time it would take to get the plant and machinery repaired they displayed a notice dated 25th March 1982 informing the workmen that since the plant and machinery had to be dismantled for repairs there would be no work for them and hence they need not attend the factory for the purpose of work. The employer stated that the union further gave a call for strike and accordingly all the workmen resorted to strike w.e.f. 25th March 1982 in support of their charter of demands. The employer stated that during the strike period the workmen used to gather at the factory gate and threaten and obstruct the representatives of Ahura Engg. Works who were deputed for the purpose of repairing the plant and machinery. The employer stated that all the workmen at the instigation of the union started disturbing the

atmosphere of the factory premises by raising slogans and threatening the staff of the consultants Ahura Engg. Works with dire consequences who were entering the factory premises for the purpose of installing the plant. The employer stated that since it was not known as to when the plant would be started they decided to close down the factory and accordingly by letter dated 29-3-82 the employer informed all the workmen that it was decided to close the factory and all the workers were asked to collect their dues which they did not do. The employer stated that the notice of closure was also published in various local news papers and by the said notice the services of all the workmen were terminated. The employer stated that after installing the new machinery the employer published an advertisement in the newspaper dated 22nd Feb., 1984 stating that the functioning of the factory would be started and the preference would be given to those employees whose services were earlier terminated due to closure and that they should make an application for the employment within 8 days from the date of publication of the notice. The employer stated that the workman accordingly made applications to the employer and on receipt of the said applications appointment letters dated 22nd September 1984 were sent to the workmen. The employer stated that the Union by letter dated 26-11-84 acknowledged the offer of appointment but neither the workmen nor the union showed any willingness to join the work. The employer stated that since the workmen had failed to join the service the employer wrote another letter dated 20th November, 1984 to the workmen individually stating that since the workmen had not joined even after 10 days of the receipt of the letter of offer of appointment it was presumed that they were not interested in service and therefore the employer had decided to engage other workmen and the copies of the said letters were sent to Asst. Labour Commissioner, Margao. The employer stated that since none of the workmen opted for the preferences given to them the employer recruited new employees w.e.f. 3rd December, 1984. The employer stated that the new employees were already confirmed and therefore the question of terminating their services and reinstating the old employees does not arise. The employer stated that the workmen themselves are to be blamed for having lost lien on employment because they opted for not joining work when they were given an opportunity to do so. The employer stated that the claim of the Workmen/Union is not legal and justified and reference is liable to be rejected. The Union thereafter filed rejoinder which is at Exb. 4.

4. On the pleadings of the parties, following issues were framed at Exb. 5.

1. Whether the purported closure of Crunet Aerated Waters Pvt. Ltd., w.e.f., 29-5-1982 was in fact a lock-out ?

2. If so, whether upon re-opening of the factory in November 1984 all erstwhile workers became entitled to get employment in the same factory as alleged ?

3. Whether Party No. II proves that the eleven workmen were offered employment and they refused to rejoin the services as alleged ?

4. Whether Party No. I proves that those eleven workmen who had a lien over the services in the concern were ever willing to rejoin services but the management illegally prevented them from rejoining as alleged ?

5. Whether the action of the management of Party No. II in refusing re-employment to these eleven workmen after re-opening of the unit in November 1984 is illegal and unjust and whether the workmen are entitled to re-employment as claimed ?

6. What relief are the eleven workmen entitled to ?

5. My findings on the issues are as follows.

Issue No. 1 : Does not arise.
Issue No. 2 : In the affirmative.
Issue No. 3 : In the affirmative.
Issue No. 4: In the negative.
Issue No. 5 : There was no refusal of re-employment by the management. The workmen are not entitled to any re-employment.
Issue No. 6 : The workmen are not entitled to any relief.

REASONS

6. *Issue No. 1 :* This issue was framed because the Union in the statement of claim contended that there was no closure of business by the employer. Infact the pleadings of the union in this respect is beyond the terms of reference. The term of the reference itself states that the termination of the services of the 11 workmen was on account of the closure. The dispute which has been referred is whether action of the employer in refusing employment to 11 workmen whose services were earlier terminated on account of the closure of the establishment, after re-opening their factory in November 1984, is legal and justified. The term of the reference therefore presupposes two facts. The first fact is that the factory of the employer was closed and the second is that it was re-opened in November 1984. The only dispute which is required to be adjudicated upon is whether the refusal of employment to the 11 workmen after the re-opening of the factory in November 1984 is legal and justified. This being the case it is not permissible for this Tribunal to go behind the factum of closure and find out whether the factory was really closed or it was a case of lock-out. That would amount to travelling beyond the terms of the reference which is not permissible under the law. Besides, it may be pointed

out that in the evidence which has been led by the Union, it has been admitted that factory of the employer was closed from 29-5-82. In the circumstance the question of deciding whether closure w.e.f. 29-5-1982 was infact a lock out, does not arise and I hold so accordingly.

7. *Issue No. 2:* There is an admission on the part of the union in its evidence that the factory of the employer was closed in the year 1982. Mr. Christopher Fonseca, the President of the Union in his evidence has admitted that the employer had inserted an advertisement in the papers on 29-5-82 that the factory would be closed permanently. Mr. Dashrath Vararkar the witness for the union has also stated in his evidence that in the year 1982 there was a strike in the factory of the employer which continued for about 8 months and thereafter the factory was closed. Therefore, there is an admission from the union itself that the employer closed its factory in the year 1982. The union has also admitted that the factory was re-started in the month of November 1984. Mr. Christopher Fonseca, the President of the union has stated in his evidence that the employer started the factory in the month of November 1984 and after re-starting of the factory the employer started its production activities by employing new workers. Besides, the term of the reference itself refers to the restarting of the factory by the employer in November 1984. Therefore once it is established that the factory was restarted after it was closed, it is to be seen whether the workmen whose services were terminated on account of closure are entitled to re-employment.

8. Adv. Shri M. S. Bandodkar, the learned Advocate for the employer submitted that no right of re-employment is vested in the workers if the factory is reopened after it was closed. He submitted that the provisions of sec. 25 H of the Industrial Disputes Act 1947 are applicable only in case of retrenchment, and the termination of the services of the workmen on account of closure does not amount to retrenchment and as such they do not have right of re-employment after the factory is re-started. He relied upon the decision of the Supreme Court in the case of Isha Steel Treatment, Bombay v/s Association of Engineering Workers, Bombay, reported in AIR 1987 SC 1478 in support of his above contentions. I have gone through the said decision of the Supreme Court. In the said case the question which arose was whether the provisions of sec.25G of the I.D.Act 1947 are required to be complied with in case of genuine closure of an establishment, and the Supreme Court relying upon its own decision in the case of Santosh Gupta V/s State Bank of Patiala AIR 1980 SC 1219, held that if the termination of the service of a workman falls either under sec.25FF or under sec. 25FFF of the Act, it would not be a termination falling under sec. 25F of the Act and hence provisions of sec.25G of the Act would not be applicable in such a case. The Supreme Court held that sec.25G applies only to a case of retrenchment and hence it does not apply to a case of genuine closure. Therefore it follows that termination of service of the workmen on account of closure is also not retrenchment. It has been held so by the Supreme Court in other cases.

9. The definition of "retrenchment" appearing in sec. 2(oo) of the Industrial Disputes Act, 1947 has been analysed by the Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala, reported in AIR 1980 SC.1219, The Supreme Court in para.4 of its judgement has held that the expression termination of service of a workman for reason whatsoever covers every kind of termination of service except those not excluded in sec.25F or not expressly provided for by other provisions of the Act such as sections 25FF and 25FFF. Sec.FF refers to payment of compensation in case of transfer of an undertaking and sec. 25FFF refers to payment of compensation in case of closure of an undertaking and such compensation is to be paid as if the workmen have been retrenched. The Supreme Court held that by enacting sec. 25FF and 25FFF of the Act the Parliament has treated termination of service of a workman on the transfer or closure of an undertaking as a "deemed retrenchment" only for the purposes of notice and compensation. In the same para the Supreme Court further held that the expression "retrenchment" must include every termination of the service of a workman by an act of the employer and the underlying assumption is that the undertaking is running as an undertaking and the employer continues as an employer, but where either on account of transfer of the undertaking or on account of the closure of the undertaking the basic assumption disappears, there can be no question of "retrenchment" within the meaning of the definition contained in sec.2(oo) of the Act. It is therefore clear from the above decision of the Supreme Court that termination of service of a workman on account of closure of an establishment would not be retrenchment within the meaning of sec.2(oo) of the Act. It is only deemed retrenchment and that too for limited purpose. Since it has been held by the Supreme Court in the case of Isha Steel Treatment (supra) that sec.25G of the Act applies only to a case of retrenchment and it does not apply to a case of closure, on the same principle sec.25 H would not apply to a case of closure as it applies only to a case of retrenchment. The Allahabad High Court in the case of Dau Dayal Bhatnagar and others v/s Raza Textiles Limited and Others, reported in 1978(37) FLR 435 has held that sec.25H of the Act when it gives preference will be available to those workmen who were retrenched indicates that preference will be available to those workmen who were retrenched individually and as such it does not apply to a case where either because of transfer of business or closure the services of the workmen are terminated, because the definition of word "retrenchment" occuring in sec.2(oo) of the Act does not specifically include a case either of transfer of business or of a closure of an industry. However, the Supreme Court in the case of the Cawnpore Tannery Ltd., Kanpur, v/s S. Guha and others, reported in AIR 1967 SC 667 has held that even before sec.25H was added to the Act, industrial adjudication generally recognised the principle that if an employer retrenched the services of an employee on the ground that the employee in question had become surplus, it was

necessary that whenever the employer had occasion to employ another hand the retrenched workman should be given an opportunity to join service and that this principle was regarded as of general application in industrial adjudication on the ground that it was based on considerations of fair play and justice. Therefore as per the decision of the Supreme Court in the above case, the principle that opportunity should be given to the retrenched workman for re-employment was recognised even when there was no such specific provision in the Act. In another case the Labour Appellate Tribunal of India at Allahabad in the case of Shri Annapurna Mills v/s Certain Workers, reported in 1953 I LLJ 43 has also held that it is the duty of the employer to take back the employee who was thrown out on account of closure. This decision of the Labour Appellate Tribunal of India has been referred to and approved by the Supreme Court in the case of Cawnpore Tannery Ltd. (supra). From the above various decisions, it therefore emerges that in a case of termination of service of a workman on account of closure though he has no right as such for re-employment under sec. 25H of the I.D.Act, 1947, if the establishment is subsequently re-started, still it is a recognised principle in industrial adjudication that the workman should be given an opportunity of re-employment as a matter of fair play and justice. Therefore in the present case when the factory was re-opened in the month of November 1984, all the workers of the employer became entitled to re-employment in the same factory. In the circumstances, I answer the issue No. 2 in the affirmative.

10. *Issue Nos. 3 and 4:* These issues are taken up together because they are inter-related. Shri Subhas Naik, representing the Union submitted that the factory which was started in the month of November 1984 was again closed in March 1987 and therefore the dispute is restricted to the issue whether the workmen should have been taken back in service in November 1984 and paid their wages till February 1987. He submitted that no individual letters were sent by the employer to the workers but the workers sent individual letters to the employer (Exb.E-5) offering themselves for re-employment, and this fact is admitted by the employer's witness Shri Chandrakant Kerkar. He submitted that the employer has also admitted about sending of the letters of appointment Exb.E-6 and Exb. E-12 coly to the workers offering employment to them. He submitted that pursuant to the said letters of appointment the workmen had gone to the factory to join the duties but the workman at the gate did not allow them to enter the factory and thus they were refused employment, and that this fact is supported by the witnesses examined by the Union. Shri Subhas Naik submitted that after the factory was restarted and the workmen were refused employment, the employer employed new workers and this fact has been admitted by the employer in their evidence. Adv. Shri Bandodkar the learned Adocate for the employer submitted on the other hand that pursuant to the letters from the workmen, the employer sent letters of appointment to the workmen individually which are produced at Exb. E-6 and E-12 colly. He submitted that the said letters of appointment were kept ready on the date mentioned in the said letter that is on 27-9-84 but they were sent on 2-11-84, and the receipt of the said letters has been admitted by the union in their letter dated 26-11-84 Exb.E-8. He submitted that the workmen were sent letters which are produced at Exb.E-7 colly informing to them that they had failed to report for duty within the specified time and no reply was sent to the said letters by the workmen denying the contents of the said letters. He submitted that no evidence has been led by the Union to prove that the watchman prevented the workmen from entering the factory premises. He submitted that in fact the employer had given written instructions to the watchman to the effect that the workmen should be allowed to enter the factory and this is evident from the letter dated 29-10-84 produced by the employer at Exb. E-9. Adv. Shri Bandodkar submitted that the Union has failed to prove that the employer prevented the workmen from reporting for work or that they were refused opportunity of re-employment.

11. It is an admitted fact that the factory which was closed by the employer in May 1982 was restarted in the month of November 1984. While deciding the issue No. 2 it has been held by me that though sec. 25H of the I.D. Act, 1947 is not applicable to a case of closure, still opportunity of re-employment should be given to the workers if the establishment is re-opened or re-started. In the present case therefore it is to be seen whether the employer offered employment to the workmen and they refused employment or they were prevented from joining their duties as alleged by the Union. Shri Subhas Naik, representing the Union has contended that no individual notices were given to the workmen by the employer offering them re-employment as required under rule 78 of the Rules. In my view this rule is required to be complied with if sec. 25 H is applicable. Since sec. 25 H of the Act has been held to be not applicable in the present case, the question of complying with rule 78 of the Rules did not arise.The purpose behind sending individual notices to the workmen is that they are made aware of the vacancies so that they can offer themselves for employment. In the present case the employer had published the notice in the newespaper Exb. E-4, informing the workmen that the employer intended to restart the factory and that the employer desired to take back in service those workmen whose services stood terminated on account of closure. Pursuant to this notice the workmen sent letters to the employer intimating their willingness to work in the factory. One of such letters has been produced at Exb. E-5. It is the case of the union that all the 11 workmen had sent letters to the employer intimating their willingness and the employer did not dispute the receipt of the said letters. Infact it is an admitted fact that consequent upon receipt of the said letters the employer sent letters of appointment to the said eleven workmen. The said letters have been produced by the employer at Exb. E-6 and E-12 colly. The receipt of the said letters by the

workmen has been admitted by the union vide letter dated 26-11-84 Exb. E-8. Besides, the employer has also produced the said letters alongwith the A/D cards which show that the 11 workmen had received the said letters. This fact is also admitted by the witnesses of the union namely Shri Baitul Rosar, Dashrath Vazarkar, Hirabai Sawant and Shri Christopher Fonseca. From the above evidence therefore it is established that each workman was given offer of appointment by the employer when and the factory was restarted.

12. Now the question is whether the workmen refused to join the services or whether they were prevented by the employer from joining as alleged by the Union. All the witnesses examined by the union namely Shri Baitaul Rosar, Dashrath Vazarkar. Hirabai Sawant, and Shri Christopher Fonseca have stated in their evidence that on receipt of the letter from the employer offering appointment, the workmen reported for work but they were not allowed to enter the factory premises. According to them the watchman did not allow them to enter the factory premises on the ground that there was an injunction order against them by the Civil Court. Once it was established that the workmen were offered appointment and were asked to report for work within the time specified in the said letters, it was for the union or the workmen to prove that they reported for work and they were prevented from entering the factory premises by the watchman. I do not find any evidence on record to this effect except for the bare statement of the witnesses. It is the case of the union that the workmen were not allowed to enter the factory premises on the ground that there was an injuction order against them. The injunction order has been produced by the employer at Exb.E-2. I have gone through the said injunction order. The said order prevented the workmen from interfering with the building, plant and machinery of the factory and restrained them from preventing the Directors, staff members or agents of the employer from entering the factory premises or coming out from it. The said order did not state that the workmen were restrained from entering the factory premises. Shri Christopher Fonseca in his deposition stated that the employer had obtained an injunction order from the Civil Court after the factory was re-opened in November 1984, restraining the workmen from entering the factory premises. When he was cross examined he undertook to produce the copy of the said injunction order but he did not do so on the ground that it is not traceable. Now if his copy of the injunction order was not traceable, he could have very well obtained the certified copy of the same from the Civil Court, which he did not do. Consequently there is no evidence from the Union that the workmen were prevented from entering the factory premises because of the injunction order. As mentioned earlier the Union has also not led any evidence to show that the workmen were prevented by the watchman from entering the factory premises. None of the witnesses of the union have stated as to on which date the workers went to the factory to report for work. If the workmen were prevented as contended by the Union, the workmen or the union would have definitely complained about it to the employer. Shri Baitul Rosar, the workman also is examined by the union as its witness has stated in his cross examination that he did not write any letter to the employer complaining that the watchman was not allowing him to enter the factory gate. The workman Shri Dashrath Vazarkar stated in his cross examination that he does not remember whether he made a complaint to the employer as regards the watchman not allowing him to report for work and also whether he reported the same fact to the Union or not. The workman Smt. Hirabai Sawant stated in her cross examination that she did not write any letter to the employer complaining that the watchman had prevented her from entering the factory premises. She further stated that she does not know whether union wrote such a letter to the employer. Therefore from the above evidence it is established that the workmen did not make any complaint to the employer about the watchman not allowing them to enter the factory premises. As far as the union is concerned Shri Fonseca, the President of the Union however stated in his cross examination that he had written a letter to the employer stating that the workers were refused entry in the factory premises. He produced the said letter dated 22-11-84 at Exb. W-2. He stated that the said letter was sent by registered post. The employer denied that the said letter was received by them. Shri Fonseca did not produce the A/D card to prove that the said letter was received by the employer. It is also pertinent to note that the said letter does not mention that it was sent by registered A/D and also the reference number on the said letter mentions the year "85", when the letter is dated 22nd November, 1984. The employer has produced a letter dated 26th November, 1984 received by them from the Union. The said letter is marked as Exb.E-2 and it is mentioned on the said letter that it is sent by registered A/D. The reference number on the said letter mentions the year 84. Therefore there is room to doubt the veracity of the said letter dated 22-11-84 Exb.W-2. The employer has produced the letter dated 4-12-84 written to the workman Baitul Rosar and letters dated 20-11-84 written to the other workmen alongwith the certificate of posting. The same are marked as Exb.E-7 colly. Shri Baitul Rosar has admitted that he received the letter dated 4-12-84 sent to him by the employer. He stated that he had replied to the said letter and this statement was denied by the employer. He did not produce the copy of the said letter when was asked to do so. Since the letter Exb.E-7 colly were sent under certificate of posting the presumption is that the workmen had received the said letter. The said letters were sent at the known address of the workmen. The Union or the workmen did not dispute the address on which the said letters were sent. Besides, the union has admitted the receipt of the said letters in its statement of claim. The said letters clearly mention that the workmen had failed to report within the time specified. There is no evidence that the workmen or the union denied the contents of the said letters. Therefore in my view the union has failed to prove that on receipt of the letters

offering appointment the workmen reported for work and they were refused entry in the factory. In the light of what is discussed above I hold that the employer offered employment to the workmen and they refused or did not rejoin the services offered to them. I further hold that the employer did not prevent the workmen from rejoining their services. I therefore answer the issue No. 3 in the affirmative and the issue No. 4 in the negative.

13. *Issue No. 5 and 6:* While deciding the issue Nos. 3 and 4 I have held that the employer had offered re-employment to the workmen after re-starting/re-opening the factory/unit in November 1984. There was no refusal of re-employment to the workmen on the part of the employer. I have further held that it is the workmen who refused or did not rejoin the service offered to them after the factory was re-started. This being the case the question of deciding whether the action of the employer in refusing re-employment to the eleven workmen after re-opening of the unit in November, 1984 is illegal and unjust does not arise. Since the workmen themselves refused or did not join the service when it was offered to them, they are not entitled to re-employment as claimed by them nor they are entitled to any relief. I, therefore answer the issue Nos. 5 and 6 accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held that there was no refusal of employment by the management of M/s Crunet Aerated Waters Pvt. Ltd., Margao, Salcete, Goa, to the 11 workmen whose services were earlier terminated on the ground of closure of the establishment, on re-opening the factory in November 1984. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/99/4211

The following Award dated 18-8-1999 in Reference No. IT/93/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Commissioner, Labour & Ex Officio Joint Secretary.

Panaji, 1st September, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/93/94

Shri Narayan R. Pethkar,
Rep. by the General Secretary,
Automobile Corporation of Goa Ltd.,
Honda, Satari Goa. — Workman/Party I

v/s

The Managing Director,
M/s Automobile Corporation
of Goa Ltd.,
Honda, Satari Goa. — Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 18-8-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order No. 28/36/94-LAB dated 23-8-94 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Automobile Corporation of Goa Ltd., Honda, Sattari Goa, in terminating the services of Shri Narayan Pethkar, Operator, w.e.f. 8-1-93 is legal and justified?

If not, to what relief the workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/93/94 and registered AD notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (For short "Workman") filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that he was employed by the Employer/Party II (For short "Employer") as an Operator from 2-1-84. That on 26-11-90, he was issued show-cause notice-cum-chargesheet by the employer alleging certain acts of misconduct against him. After the chargesheet was issued an enquiry was conducted into the said chargesheet by the Enquiry Officer, Shri P. J. Kamat. That the workman replied to the chargesheet denying the charges levelled against him. That the inquiry proceedings continued for nearly two years and during this period, the workman was placed under suspension. That after completing the enquiry, the Enquiry Officer submitted his findings on 31-10-92 holding that the charges levelled against the workman have not been proved. That thereafter, the employer issued a showcause letter dated 10-12-92 to the workman informing him that the employer did not accept the findings of the

Enquiry Officer and further asked the workman to show cause as to why he should not be dismissed from service. That the workman replied to the said showcause notice by letter dated 2-1-93 but however, the employer issued a dismissal letter dated 8-1-93 dismissing the workman from service with immediate effect. That the union namely The Automobile Corporation of Goa Limited Workers Union raised an industrial dispute with the employer demanding reinstatement of the workman in service with full back wages and continuity in service. That the conciliation proceedings held by the Assistant Labour Commissioner, Mapusa, resulted in failure and on receipt of the failure report, the Government of Goa made the present reference. The workman contended that the conclusion of the employer holding that the charges against the workman are proved are illegal and unjustified as the same are bias, vindictive and malafide. The workman contended that since the Enquiry Officer had held that the charges are not proved against the workman, the employer could not have come to its own findings. The workman contended that the punishment of dismissal from service imposed on him is unjust, disproportionate, discriminatory, illegal and unjustified. The workman therefore, claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 5. The employer admitted that the workman was appointed as an Operator from 24-6-86 and stated that prior to that, he joined as an Apprentice with effect from 2-1-84. The employer stated that the workman had committed serious acts of misconduct and therefore, he was issued a chargesheet dated 26-11-90 and was suspended pending enquiry. The employer stated that in the enquiry, the workman participated fully and on completion of the enquiry, the Enquiry Officer gave his findings that the charges levelled against the workman are not proved. The employer stated that its Competent Authority went through the findings of the Enquiry Officer and came to its own conclusion that the charges levelled in the chargesheet against the workman are proved. The employer stated that while dis-agreeing with the findings of the Enquiry Officer, the Competent Authority of the employer gave detailed reasons for arriving at a conclusion and therefore, the employer issued a showcause notice to the workman to show cause as to why he should not be dismissed from services, and alongwith the said showcause notice, the findings of the Enquiry Officer and the note of the Competent Authority was enclosed. The employer stated that on going through the written explanation from the workman, the employer decided to dismiss him from service from 8-1-93. The employer denied that it had no authority to disagree with the findings of the Enquiry Officer or that the decision of the Competent Authority is illegal, unjustified, bias, vindictive, malafide or unjustified. The employer also denied that the punishment imposed on the workman is unjust, disproportionate or discriminatory. The employer denied that the workman is entitled to any reliefs as claimed by him. The workman thereafter filed Rejoinder at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb.7 and the evidence of the workman on preliminary issues number 1, 2 and 3 were partly recorded. Thereafter, the case was fixed for filing terms of settlement as parties submitted that they are trying to arrive at a settlement. On 13-7-99, the parties appeared alongwith their respective representatives and submitted that the dispute between the parties was amicably settled. They filed the terms of settlement dated 13-7-99 at Exb.11. The parties also prayed that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. The said terms are duly signed by the parties. I therefore, accept the submissions made by the parties and pass the Consent Award in terms of the settlement dated 13-7-99 Exb.11.

ORDER

1. It is agreed by the Employer/Party II that Rs. 1,89,129/- (Rupees One lakh, eighty nine thousand one hundred and twenty nine only) shall be paid (as per the details furnished in the Annexure) in full and final settlement of all claims arising out of the employment of whatsoever nature including claims arising out of the above reference.

2. Mr. Narayan Pethkar shall accept the amount mentioned in Clause (1) above in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the Company including any claim of reinstatement or re-employment.

3. It is agreed by the workman that the amount mentioned in Clause (1) shall also include Notice Pay, Gratuity, Provident Fund, Bonus, Ex-gratia etc., if any upto date.

ANNEXURE TO SETTLEMENT DATED 13-7-99

Reference : IT/93/94

Name : Narayan Pethkar

Ticket No. 2452

	Rupees
1. Compensation (including Notice Bonus, Ex-gratia etc.)	1,66,114
2. Leave encashment	1886
3. Provident Fund	1009
4. Gratuity	20,120
Total: Rs.	1,89,129
Income Tax after section 89 (1) relief Form No. 10E (Rule 21 AA) furnished by workman.	
Net Amount Rs.	1,89,129

(Rupees One Lakh eighty nine thousand one hundred and twenty nine only)

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/4926

The following Award dated 10-9-1999 in Reference No. IT/29/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour and Ex officio Joint Secretary.

Panaji, 30th September, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/29/92

Shri Prasad A. Mondkar,
Rep. by The General Secretary
Automobile Corporation of Goa
Ltd. Workers Union,
Honda, Sattari-Goa. — Workman/Party I

V/s

M/s. Automobile Corporation
of Goa Ltd.,
Honda, Satari-Goa. — Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 10-9-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13-4-1992 bearing No. 28/9/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s. Automobile Corporation of Goa Ltd., Honda-Satari, Goa, in terminating the services of Shri Prasad A. Mondkar, Operator, with effect from 31-5-90 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/29/92 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "workman") filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "employer") as an Operator from August 1984. That on 2nd April 1990 he was issued a charge sheet alleging that he remained absent unauthorisedly on several occasions and the details of number of days on which he remained absent was given in an enclosure annexed to the charge sheet. That thereafter the chargesheet was issued and enquiry was conducted and on completion of the enquiry the Inquiry Officer gave his findings on 20th May, 1990 holding the workman guilty of the charges levelled against him in the charge sheet. That thereafter a show cause notice was issued to the workman to show cause why his services should not be terminated. That the workman replied to the show cause notice by reply dated 31st May 1990. That however, the employer terminated his services w.e.f. 31st May 1990 by letter dated 31st May 1990. The workman contended that the charge sheet issued to him is vague and as such the enquiry conducted against him into the said chargesheet is bad in law and hence liable to be set aside. The workman also contended that the findings of the Enquiry Officer were perverse and not based on the evidence on record as also the enquiry conducted against him is in violation of the principles of natural justice. The workman also contended that the punishment of dismissal from service imposed upon him is too severe and disproportionate to the misconduct alleged against him. The workman therefore claim that he is entitled to reinstatement in service with full back wages as the termination of his service is illegal and unjustified.

3. The employer filed the written statement at Exb.4. The employer stated that the workman was remaining absent unauthorisedly and therefore a chargesheet dated 2-4-90 was issued to him and subsequently enquiry was held in which he fully participated. The employer denied that the chargesheet issued to the workman was vague. The employer stated that the Inquiry Officer submitted his findings holding the workman guilty of the charges levelled against him in the chargesheet. The employer stated that since the charges proved against the workman were of grave and serious nature the workman was discharged from service w.e.f. 31-5-90. The employer stated that the workman accepted all his legal dues including gratuity in full and final settlement of his claim and therefore no dispute whatsoever survive and hence the reference is bad in law and not maintainable. The employer denied that

the enquiry was held in violation of the principles of natural justice or that findings of the Inquiry Officer are perverse or that punishment imposed on the workman is disproportionate to the misconduct proved against him. The employer stated that the termination of the service of the workman is legal and justified and therefore he is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.5.

4. On the pleadings of the parties issues were framed at Exb.6 and the issue No. 1 which was touching the fairness of the enquiry, was treated as preliminary issue. After the parties had led evidence on the said issue this Tribunal by order dated 21-9-95 held that the domestic enquiry held against the workman is fair and impartial. Thereafter issue No. 1 A was framed as regards whether the charges of misconduct levelled against the workman are proved to the satisfaction of the Tribunal by acceptable evidence as the workman had contended that the findings of the Inquiry Officer are perverse and the case was fixed for arguments on the issue. On 13-7-99 when the case was fixed for hearing Shri Subhas Naik representing the workman and Adv. M. S. Bandodkar representing the employer appeared and submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 13-7-99 at Exb.16. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said settlement is certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 13-7-99 Exb.16.

ORDER

1. It is agreed by the Employer/Party II that Rs. 1,00,000/- (Rupees One Lakh only) shall be paid in full and final settlement of all claims arising out of the employment of whatsoever nature including claims arising out of above reference.

2. Mr. Prasad Mondkar shall accept the amount mentioned in Clause (1) above in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the company, including any claim of reinstatement or re-employment.

3. It is agreed by the workman that the amount mentioned in Clause (1) shall also include Notice Pay, Gratuity, Provident Fund, Bonus, Ex-gratia etc., if any up to date.

Annexure to settlement dated 13-7-99

Reference No. : IT/29/92

Name : Mr. Prasad Mondkar

Ticket No. 2488

1. Compensation (Including Notice Pay, Bonus, Ex-gratia etc.)	—	Rs. 65562.00
2. Leave encashment	—	—
3. Provident Fund	—	Rs. 21341.00
4. Gratuity	—	Rs. 13097.00
Total	—	Rs. 100000.00
Income tax after section 89(1) relief		—
Form No. 10E (Rule 21 AA) furnished by workman.		
Net Amount	—	Rs. 100000.00

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/4927

The following Award dated 9-9-1999 in Reference No. IT/87/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour and Ex Officio Joint Secretary.

Panaji, 30th September, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/87/94

Shri Somnath R. Naik,
Rep. by The General Secretary
Automobile Corporation of Goa Ltd.
Workers Union,
Honda, Satari-Goa. — Workmen/Party I

V/s

M/s. Automobile Corporation
of Goa Ltd.,
Honda, Satari-Goa. — Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 9-9-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-8-94 bearing No. 28/28/94-LAB referred the following dispute for adjudication by this Tribunal.

(1) Whether the enquiry held by the management of M/s Automobile Corporation of Goa Ltd., Honda, Satari, Goa, into the charges levelled against the workman, Shri Somnath R. Naik, is fair and proper ?

(2) Whether the action of the management of M/s Automobile Corporation of Goa Ltd., Honda, in terminating the services of Shri Somnath R. Naik, workman, with effect from 24-2-93 is legal and justified ?

(3) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/87/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "workman") filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "employer") and he was the member of Automobile Corporation of Goa Ltd. Workers' Union along with other workers of the employer. That the union had submitted charter of demands to the employer and since there was no settlement on the said demands there was industrial unrest in the establishment of the employer. That the employer chargesheeted 7 workmen including him alleging certain acts of misconducts. That the chargesheet was issued malafidely and vindictively against the workers as they indulged in legitimate union activities with a view to prevail upon the employer to enter into the settlement on productivity with the union/ /workers. That pending the enquiry 7 workers including the workman were suspended for over two years and finally they were dismissed from service. The workman contended that the chargesheet issued to him is vague and it is not said under which standing orders or service rules the same is issued and also the enquiry held against him is not fair and proper as no opportunity was given to him to defend himself in the enquiry. The workman also contended that the findings of the Inquiry Officer are perverse as they are not based on the evidence on record. The workman further contended that the order of dismissal issued to him is unjust, disproportionate and discriminatory. The workman therefore claim that he is entitled to reinstament in service with full back wages.

3. The employer filed the written statement denying the contentions made by the workman in the statement of claim. The employer stated that the workman had committed serious acts of misconduct and therefore a chargesheet dated 18-12-90 was issued to him and he was suspended pending enquiry. The employer denied that the chargesheet is vague or that it does not state under which standing orders or the service rules the same is issued. The employer denied that the enquiry was held in violation of the principles of natural justice or that it was not held in a fair and proper manner. The employer denied that the findings of the Inquiry Officer are perverse and not based on the evidence on record. The employer also denied that the order of dismissal imposed on the workman is unjust, disproportionate or discriminatory. The employer stated that the order of dismissal imposed on the workman is legal and justified and the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb.5.

4. On the pleadings of the parties issues were framed at Exb.7 and the issue Nos. 1, 2 and 3 which were touching the fairness of the enquiry, the vagueness of the chargesheet and the perversity of the findings of the Inquiry Officer were treated as preliminary issues. The workman led his evidence on the said preliminary issues and thereafter the case was fixed for employer's evidence on the preliminary issues. On 13-7-99 when the case was fixed for hearing the workman as well as the employer submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 13-7-99 at Exb.10. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said settlement is certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 13-7-99 Exb.10.

ORDER

1. It is agreed by the Employer/Party II that Rs. 196026/- (Rupees One Lakh Ninety Six Thousand and Twenty Six only) shall be paid (as per the details furnished in the Annexure) in full and final settlement of all claims arising out of the employment of whatsoever nature including claims arising out of above reference.

2. Mr. Somnath Naik shall accept the amount mentioned in Clause (1) above in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the company, including any claim of reinstatement or re-employment.

3. It is agreed by the workman that the amount mentioned in Clause (1) shall also include Notice Pay, Gratuity, Provident Fund, Bonus, Ex-gratia etc., if any up to date.

Annexure to settlement dated 13-7-99

Reference No. : IT/87/94

Name : Somnath Naik

Ticket No. 2518

1. Compensation (Including Notice Pay, Bonus, Ex-gratia etc.)	— Rs.	156782.00
2. Leave encashment	— Rs.	3405.00
3. Provident Fund	— Rs.	23274.00
4. Gratuity	— Rs.	17534.00
Total	— Rs.	200995.00
Income tax after section 89(1) relief	Rs.	4969-00
Form No. 10E (Rule 21 AA) furnished by workman.		
Net Amount	— Rs.	196026.00

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/4928

The following Award dated 9-9-1999 in Reference No. IT/88/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour and Ex Officio Joint Secretary.

Panaji, 30th September, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/88/94

Shri M. S. Kerkar
Rep. by The General Secretary,
Automobile Corporation of Goa
Ltd., Workers Union,
Honda, Satari Goa. — Workman/Party I

V/s

M/s. Automobile Corporation
of Goa Ltd.,
Honda, Satari Goa. — Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Panaji, Dated: 9-9-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 16-8-94 bearing No. 28/33/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Automobile Corporation of Goa Ltd., Honda, Sattari Goa, in terminating the services of Shri M. S. Kerkar, Operator, with effect from 27-11-92 is legal and justified ?

If not, to what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/88/94 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "workman") filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "employer") as an Operator. That along with other workers of the employer he was the member of Automobile Corporation of Goa Ltd. Workers' Union. That the union had submitted charter of demands to the employer on 30-5-90 and there was a settlement on 1st September 1990 but the issue of productivity to be achieved by the workman was not specifically decided. That the management displayed a chart on the notice board mentioning therein productivity to be achieved by each workman. That the productivity figures mentioned in the said chart were highly unrealistic and unachievable besides there being no discussion on the productivity to be achieved by the workman. That there was industrial unrest since the issue of productivity was not resolved. The employer picked up a few workmen who were taking active interest in the trade union activities and charge sheeted them with false and filmsy charges and the workman was one among them. That subsequently the employer arrived into a settlement with the representatives of the workers on the issue of productivity and though there was such a settlement the employer did not withdraw the chargesheets issued to the workmen including the workman. The workman contended that the chargesheets issued to them was malafided because the workers indulged in legitimate union activities with a view to prevail upon the employer to enter into a settlement on productivity with the union. That the employer conducted enquiry into the chargesheet issued to the workman. That the enquiry which was conducted against the workman was in violation of the principles of natural justice and it was not fair and proper as the workman was not given

proper opportunity to defend himself in the enquiry. That the findings of the Inquiry Officer are perverse and they are not based on the evidence on record. The workman contended that the punishment of dismissal from service imposed upon him is highly unjust, disproportionate and discriminatory. The workman therefore claimed that he is entitled to reinstatement in service with full back wages as the termination of his service is illegal and unjustified.

3. The employer filed the written statement at Exb.5. The employer stated that the workman had committed serious acts of misconduct and therefore he was issued a chargesheet dated 26-11-90 and he was suspended pending the enquiry. The employer stated that the workman fully participated in the enquiry which was conducted in fair and proper manner and the workman was given full opportunity to defend himself in the enquiry. The employer denied that the chargesheet was issued to the workman malafidely or with a view to victimise him for his trade union activities. The employer stated that the Inquiry Offficer submitted his findings after completing the enquiry holding the workman guilty of the charges of misconduct. The employer denied that findings of the Inquiry Officer are perverse or that they are no based on the evidence on records. The employer denied that the order of dismissal from service imposed on the workman is highly unjust, disproportionate or discriminatory. The employer stated that the termination of the service of the workman is legal and justified and therefore he is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.6.

4. On the pleadings of the parties issues were framed at Exb.7 and the issue Nos. 1, 2 and 4 which were touching the fairness of the enquiry, the vagueness of the chargesheet and the perversity of the findings of the Inquiry Officer were treated as preliminary issues. The workman led his evidence on the said preliminary issues and thereafter the case was fixed for employer's evidence on the preliminary issues. On 13-7-99 when the case was fixed for hearing the workman as well as the employer submitted that the dispute between the parties was amicably settled and they filed the terms of settlement dated 13-7-99 at Exb. 11. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and I am satisfied that the said settlement is certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 13-7-99 Exb.11.

ORDER

1. It is agreed by the Employer/Party II that Rs. 128514/- (Rupees One Lakh Twenty Eight Thousand Five Hundred and Fourteen only) shall be paid (as per the details furnished in the Annexure) in full and final settlement of all claims arising out of the employment of whatsoever nature including claims arising out of above reference.

2. Mr. Mehgraj Kerkar shall accept the amount mentioned in Clause (1) above in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the company, including any claim of reinstatement or re-employment.

3. It is agreed by the workman that the amount mentioned in Clause (1) shall also include Notice Pay, Gratuity, Provident Fund, Bonus, Ex-gratia etc., if any up to date.

Annexure to settlement dated 13-7-99

Reference No. : IT/88/94

Name : Mr. Mehgraj Kerkar

Ticket No. 2624

1. Compensation (including Notice Pay, Bonus, Ex-gratia etc.)	— Rs.	111765.00
2. Leave encashment	— Rs.	2910.00
3. Provident Fund	—	
4. Gratuity	— Rs.	13839.00
Total	— Rs.	128514.00
Income tax after section 89(1) relief		—
Form No. 10E (Rule 21 AA) furnished by workman.		
Net Amount	— Rs.	128514.00

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/4929

The following Award dated 17-9-1999 in Reference No. IT/6/93 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex Officio Joint Secretary.

Panaji, 30th September, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/6/93

Shri Sahibjan
Rep. by Goa Trade &
Commercial Workers' Union,
Velho Building, 2nd Floor,
Panaji-Goa. — Workman/Party I

V/s

M/s. Uttar Pradesh State
Bridge Corporation Ltd.,
New Mandovi Bridge Site,
Panaji-Goa. — Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri A. M. Karnik.

Panaji, dated: 17-9-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 4-1-93 bearing No. 28/60/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Uttar Pradesh State Bridge Corporation Ltd., New Mandovi Bridge Site, Panaji, in terminating the services of Shri Sahibjan, with effect from 31-7-1992 is legal and justified ?

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/6/93 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I was represented by Shri Subhash Naik and the Employer/Party II was represented by Adv. A. M. Karnik. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb.3. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (for short, "Employer") is engaged in the business of construction of bridges, roads, stadiums all over India as well as outside India. That during the period 1987 to 1988/98 the employer undertook construction of New Mandovi Bridge at Panaji, construction of bridge at Colvale and Banastari and also undertook the construction of Indoor Sports Stadium at Fatorda, Margao, Goa. That to carryout the projects, the employer engaged the services of workmen from Goa as well as Uttar Pradesh, Bihar etc. That the workman was employed at New Mandovi Bridge site, Panaji, Goa, since January 1988 and initially he was employed as a Helper and thereafter as a Beldar since the year 1989. That the workman was employed in category 'C' i.e. muster roll worker category and was paid initially wages at the rate of Rs. 14 per day which was subsequently increased to Rs. 25/- per day from 1st November, 1991. That the workman was entitled to privilege leave of 15 days and sick leave of 6 days in a year and whenever he went to his native place he applied for pl. That on 12th June, 1992 the workman proceeded to Bihar to visit his family members and applied for 15 days privilege leave which was sanctioned by the employer. That the workman fell ill after reaching Bihar and he was under treatment of Dr. Mohammed Yasin from 25th July, 1992 and after he was declared fit he arrived in Goa on 30th July, 1992. That the workman reported for work on 31st July, 1992 and submitted the medical certificate given by Dr. Yasin dated 28th July, 1992 but the employer did not take the workman back in service and he was told that his services were no longer required. That the Goa Trade & Commercial Workers Union addressed a letter dated 17th August, 1992 to the employer asking the employer to take the workman back in service but the employer refused to do so and as such the said union raised an industrial dispute with the Labour Commissioner which was admitted in conciliation. That no settlement could be arrived at in the conciliation proceedings and therefore failure report dated 9th Nov., 1992 was submitted to the Government. The workman contended that the termination of his service by the employer is in violation of Sec. 25F of the Industrial Disputes Act, 1947 as no notice of termination was given to him nor any retrenchment compensation was paid to him. The workman also contended that the employer did not comply with section 25-G of the Industrial Disputes Act, 1947. The workman therefore contended that the termination of his service by the employer is illegal and unjustified and hence he is entitled to be reinstated in service with full back wages.

3. The employer filed written statement at Exb. 4. The employer stated that the workman was appointed as Beldar as per the letter of appointment as a temporary/casual workman. The employer stated that the workman requested for leave from 13-6-92 to 27-6-92 on the ground of some important work and the said leave was sanctioned by the Assistant Engineer of the employer. The employer stated that the workman did not report for duty on 28-6-92 nor he sent any intimation in respect of extension of his leave. The employer stated that the workman was informed that his services stood terminated on his own accord for not reporting for duty on expiry of his leave and also for not seeking any extension. The employer stated that the services of the workman stood terminated as he remained absent from work for more than 13 consecutive days i.e. from 28-6-92 to 30-7-92 in terms of clause L-2-12 of the Certifed Standing Orders of the employer. The employer stated that the services of the workman were not terminated by the employer and therefore this Tribunal cannot adjudicate upon the reference for want of jurisdiction.

The employer also stated that the workman did not raise any demand on the employer and instead approached the Asst. Labour Commissioner and since no demand was raised against the employer no industrial dispute existed and as such the reference made by the Government is bad in law. The employer denied that the workman is entitled to any relief as claimed by him and stated that the reference made by the Government is liable to be rejected. The workman thereafter filed rejoinder.

4. On the pleadings of the parties, following issues were framed at Exb.6.

1. Whether Party I-Workman proves that the termination of his services is in violation of the principles of natural justice and the standing order ?

2. Whether Party I-Workman proves that Party II did not follow the provisions or sec. 25(F) and 25(G) of the Industrial Disputes Act, 1947 and hence the termination is illegal?

3. Whether Party I-Workman proves that the action of the management of Party II in terminating the services of Party I-Workman w.e.f. 31-7-92 is illegal and unjustified?

4. Whether the Party II-Employer proves that there is no industrial dispute as no demand was raised by Party I-Workman on the Party II?

5. Whether the Party II proves that Party I-Workman abandoned his service was terminated in accordance with the provisions of the standing orders?

6. Whether Party I-Workman is entitled to any relief?

7. What Award or Order?

5. My findings on the issues are as follows:

Issue No. 1 : Termination of service is in violation of principles of natural justice.

Issue No. 2 : In the affirmative as far as Sec. 25(F) is concerned. In the negative as far as Sec. 25(G) is concerned.

Issue No. 3 : In the affirmative.

Issue No. 4 : In the negative.

Issue No. 5 : In the negative.

Issue No. 6 : As per para 18 below.

Issue No. 7 : As per order below.

REASONS

6. *Issue No. 4:* This issue is taken up first since the employer has challenged the maintainability of the reference on the ground that there is no industrial dispute. Shri Karnik, representing the employer has contended that no dispute was raised by the workman before the employer as regards termination of his service and that since the dispute or demand was raised before the Labour Commissioner, there is no industrial dispute. In support of his contention he has relied upon the judgment of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd., v/s Industrial Tribunal of Gujrat, reported in SLJ 1950-83 Vol. 12 pg. 528. It is a settled law that if the demand or dispute is not raised against the employer, there is no industrial dispute. From the order of reference it can be seen that the present dispute has been raised by the Goa Trade and Commercial Worker's Union on behalf of the workman. It is not the case of the employer that the said union had no authority to raise the dispute on behalf of the workman. The employer has examined Shri Rajendranath Mishra, The Dy. Project Manager, as its witness. In his cross-examination he has admitted that the Goa Trade and Commercial Workers' Union had raised a dispute on behalf of the workman in the month of August 1992 alleging that the workman's services were terminated illegally and without justification. He has further admitted that conciliation proceedings were held before the Labour Commissioner which ended in failure. Therefore there is clear admission on the part of the employer that dispute/demand was raised against it by the workman through the union as regards termination of his service and on the said dispute/demand conciliation proceedings were held which resulted in failure. Besides, the workman has produced the letter dated 17th August 1992 Exb. W-2 addressed to the Project Manager of the employer by the President of the Union alleging that the termination of service of the workman is illegal. The workman has also produced the failure report dated 9.11.92 Exb. W-3 wherein it is stated that based on the complaint of the union dated 17.8.92 employer was called for discussion and the employer submitted its written statement. In view of the above evidence there is no substance in the contention of the employer that there is no industrial dispute. I, therefore hold that the employer has failed to prove that there is no industrial dispute in the present case. Hence, I answer the issue No.4 in the negative.

7. *Issue Nos 1, 2, 3, and 5:* All these issues are taken up together as they are inter-related. Shri Subhas Naik, representing the workman has submitted that the workman has submitted that the workman was employed from 1-1-1988 which is admitted by the employer in the written statement. He has submitted that since the services of the workman were terminated from 31-7- 92, the employer ought to have complied with the provisions of Sec. 25F of the Industrial Disputes Act, 1947, as by then the workman had completed 240 days of service. He has submitted that the employer's witness Shri Mishra has admitted in his cross examination that the workman was not given any notice or retrenchment compensation. Shri Karnik representing the workman has submitted on the other hand that the services of the workman stood terminated because he had remained absent unauthorisedly and in terms of the Certified

Standing Orders of the employer the workman was deemed to have abandoned his service and hence there was no question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Shri Subhas Naik, representing the workman in his reply submitted that the Certified Standing Orders of the employer apply only to the State of Uttar Pradesh and not to the State of Goa. He has submitted that what is applicable are the Model Standing Orders which do not provide for abandonment of service.

8. I would first like to deal with the submission of Shri Subhas Naik, representing the workman that the Certified Standing Orders of the employer apply only to the State of Uttar Pradesh and not to the State of Goa. In my view the workman cannot raise this issue at the time of arguments. It was clearly the case of the employer that since the workman had remained absent without permission, it was deemed that he had abandoned his services as per the Certified Standing Orders of the employer. If according to the workman the Certified Standing Orders were not applicable to the State of Goa, he ought to have made pleadings to that effect in the statement of claim or at least in the rejoinder. No such pleadings are made by the workman. Even otherwise, the employer has produced its Certified Standing Orders alongwith the certificate issued by the Certifying Officer, Uttar Pradesh, under the Industrial Employment Standing Orders Act, 1947. Sec. 5 of the Industrial Employment (Standing Orders) Act (for short, "Standing Orders" Act, states that the Standing Orders are required to be certified by the Certifying Officer. Sec. 2(c) of the said Standing Orders Act defines "Certifying Officer". As per the said definition Certifying Officer means a Labour Commissioner, or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government by notification in the Official Gazette to perform all or any of the functions of a Certifying Officer under the Act. Section 2(b) of the said Act defines "Appropriate Government". As per the said definition in respect of industrial establishment under the control of the Central Government or a railway administration or oil field, the appropriate Government is the Central Government and in all other cases it is the State Government. In the present case the Certified Standing Orders of the employer are duly certified by the Dy. Labour Commissioner of Lucknow who is the Certifying Officer of the Uttar Pradesh Government. In relation to the employer, the appropriate Government is the State of Uttar Pradesh. Therefore the Standing Orders of the employer have been properly certified as required under the provisions of the Standing Orders Act. The Standing Orders are to be certified once. There is no provision in the Standing Orders Act which states that the Standing Orders of an establishment are required to be certified by the Certifying Officer of that State also where the work is undertaken. An establishment may have branches or units in different states. It would be fallacious to say that the Standing Orders of that establishment should be certified by the Certifying Officer of each state wherever the said establishment has its branches or units. The Standing Orders of an establishment are nothing but the conditions of service of the employees of that establishment. There cannot be two or more sets of conditions of service in an establishment that is, one set of conditions for the employees in one State and another in the other State. The conditions of service should be common to all the employees of the establishment. Therefore I do not find any substance in the submission of Shri Subhas Naik, representing the workman that the Certified Standing Orders of the employer are not applicable to the State of Goa, and hence the same is rejected.

9. Shri Subhas Naik, representing the workman has submitted that the workman had not abandoned his services but he had gone to his native place at Bihar where he fell sick and when he reported for work on 31-7-92, alongwith the leave application and the medical certificate, it was not accepted and he was told that his services were terminated. He has submitted that termination is illegal as the workman had completed 240 days in service and the employer did not give him one month's notice or notice pay or retrenchment compensation and hence there is violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Shri Karnik, representing the employer has submitted on the other hand that the services of the workman are not terminated but he is deemed to have abandoned his services in terms of clause L-2-12 of the Certified Standing Orders of the employer and therefore there is no question of complying with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. He has submitted that the Certified Standing Orders are binding on the workers and in support of his this contention he has relied upon the judgements of the Supreme Court in the case of Rajasthan State Road Corporation and anr. v/s Krishnakanth reported in 1995 II CLR 180 and in the case of Dunlop India Ltd. v/s Their Workmen reported in 1950-83 SCLJ Vol. 9 pg. 345. He has also submitted that the reference is not maintainable because the dispute which has been referred is as regards alleged termination when the case is of abandonment of service. In this respect he has relied upon the judgment of the Bombay High Court in the case of Sitaram Shirodkar v/s Administrator, Government of Goa and others reported in 1985 I LLJ 480.

10. Before I proceed to discuss the merits of the case, I would like to deal first with the objection raised by the employer as regards the maintainability of the reference. It is an accepted position that the Government makes the reference based on the dispute raised by the workman. In the present case it was the contention of the workman that when he reported for work on 31-7-92, he was not taken back in service. His contention was that his services were terminated on 31-7-92. On this contention of the workman the Government made the reference whereby the dispute as regards termination of service was referred. Abandonment of service by the workman is the defence which has been taken up by the employer. The Judgement of the Bombay High Court, Panaji Bench in Sitaram Shirodkar's case (supra) was considered by the Nagpur Bench of

the Bombay High Court in the case of Sheshrao Bhaduji Hatwar v/s Presiding Officer, First Labour Court & Others reported in 1990 II CLR 726. The decision in Sitaram Shirodkar's case is a Single Judge decision whereas the decision in Sheshrao Hatwar's case is a Division Bench decision. In this case in para. 5 of the Judgment the High Court has held that the definition of "industrial dispute" is itself wide enough to include any dispute, difference connected with employment or non-employment. The High Court held that in many cases the Supreme Court has held that order of reference should be liberally construed and the reference should not be rendered incompetent merely because it is made in general terms and it is always permissible for the Labour Courts or the Tribunals to construe the reference in the light of the backdrop against which it is made and to bring out the real dispute for its decision. The High Court further held that many times the reference is cryptic and vague and is not properly worded and sometimes it is not even possible to mention therein the defence of the other party and in such cases it is the duty of the adjudicating authority to examine the pleadings, documents, etc. and to locate the exact nature of dispute. In para. 7 of the judgement the Bombay High Court held that the legal position is clear that the mere wording of the reference is not decisive in the matter of tenability of reference and it may contain the defence or may not. The High Court further held that if points of difference are discernible from the material before the Court of Tribunal, it has only one duty and that is to decide the points on merits and not to astute to discover formal defects in the wording of reference. In view of the above judgements of the Division Bench of the Bombay High Court there is no substance in the contention of the employer that the reference is not maintainable. In my view the reference is perfectly maintainable.

11. Now I shall deal with the merits of the case. The contention of the employer is that the services of the workman were not terminated by the employer but the workman is deemed to have abandoned his services by remaining absent unauthorisedly thereby terminating his service with the employer in terms of clause L-2-12 of the Certified Standing Orders of the employer. The employer has relied upon the Judgements of the Supreme Court in the case of Rajasthan State Road Corporation (supra) and Dunlop India Ltd.(supra) in support of its contention that the Certified Standing Orders have the binding effect on the workers. The Certified Standing Orders have been produced by the employer.

12. The workman in his deposition has stated that he had gone to his native place on 12-6-92 and that he has applied for 15 days leave which was sanctioned. He has stated that he fell sick on reaching Bihar and he reported for work on 31-7-92 along with the leave application and medical certificate which was not accepted by the Project Manager of the employer Mr. J. K. Pant and he was told that he would not be taken back in service. He has produced the leave application and the medical certificate at Exb. W-1 colly. The medical certificate dated 28-7-92 of the Doctor Mohammed Yasim states that the workman was sick from 25-6-92 to 27-7-92 and was under his treatment. The leave application of the workman for the period 13-6-92 to 27-6-92 has been produced at Exb. W-4. The other leave application dated 31-7-92 is on record as Exb.E-1 colly. The endorsement on the said application shows that the workman was sanctioned leave upto 26-6-92. Shri Rajendranath Mishra, the employer's witness has stated in his deposition that the workman had to report for work on 28-6-92 as per his leave application but he did not do so, and reported only somewhere on 30th July or 31st July 1992 and that between the period 28-6-92 to 31-7-92 the workman did not submit any leave application. The workman's case is that he was sick from 26th June 1992 and he admitted in his cross that he neither reported his sickness to the employer nor he applied for leave. The employer has suggested in the evidence of the workman that the medical certificate produced by him is false. However, there is an admission on the part of the employer that the workman reported for work on 31-7-92 and he was not allowed to work. This was because it was presumed that the workman had abandoned his services in view of his unauthorised absence beyond the period of 13 consecutive days and that he had tenninated his contract in terms of clause L-2-12 of the Certified Standing Orders of the employer. It is therefore a matter of fact that the services of the workman stood terminated from 31-7-92, though there is no written order to that effect. Hence, it is to be seen whether the termination of service of the workman is legal and justified.

13. It is the contention of the employer that the standing orders are binding on the workers. I have gone through the authorities relied upon by the employer in support of this contention. It is no doubt true that the Standing Orders are the Terms of employment and they govern the service conditions of the workers. According to the employer the services of the workman have stood terminated by virtue of clause L-2-12 of the Certified Standing Orders. The said clause reads as follows:

> "Any workman who remains absent from duty without leave or in excess of the period of leave originally sanctioned or subsequently extended for more than 13 consecutive days, shall be deemed to have left the services of his own accord, without notice, thereby terminating his contract and his name will accordingly be struck of the rolls."

In the present case from the evidence which has been discussed by me above, it is established that the workman was sanctioned leave for 15 days from 13-6-92 and even after the expiry of leave he remained absent for nearly more than a month, without intimation to the employer. In the case of Rahul Butalia v/s State Bank of India reported in 1995 I CLR 742, the Delhi High Court has held that it is well settled that where service rules make a provision for deemed voluntary abandonment or resignation from service, an opportunity of proper hearing must be afforded to an employee before power

under the rules can be invoked. The above decision of the Delhi High Court is in conformity with the judgments of the Supreme Court in the case of D. K. Yadav v/s J. M. A. Industries reported in 1993 II CLR 116. In this case the services of Shri D. K. Yadav were terminated by intimating to him that he wilfully absented himsef from duty continuously for more than 8 days from 3rd December 1980 without leave or prior intimation or information or previous permission from the management and therefore deemed to have left the services of the company on his own account and lost lien on the appointment with effect from 3rd December 1980 as per clause 13(2) (iv) of the Certified Standing Orders of the company. The Tribunal held that the action of the company was in accordance with the Certified Standing Orders and it was not a termination nor retrenchment under the Industrial Disputes Act, 1947. The Supreme Court however held that it is a settled law that the Certified Standing Orders have statutory force which do not expressly exclude the application of the principles of natural justice. The Supreme Court held at para. 8 of the Judgment that the cardinal point that has to be borne in mind in every case is whether the person concerned should have a reasonable opportunity to present his case and the authority should act fairly, justly, reasonably and impartially and it is not so much to act judicially but to act fairly namely the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. That is, in other words, the application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person. In para. 9 of the judgment the Supreme Court held that it is the fundamental rule that no decision must be taken which will affect the right of any person without first person being informed of the case and be given him/her an opportunity of putting forward his/her case. The Supreme Court held that since the appellant Shri D. K. Yadav was not given any opportunity to put forth his case nor any enquiry was held in the matter, there was violation of principles of natural justice. The Supreme Court held that the principles of natural justice must be read into the Standing Order No. 13(2)(iv). Consequently the Award of the Labour Court was set aside and the letter dated 12-12-1980 of the management terminating the services was also set aside.

14. In the present case also the employer invoked clause L-2-12 of the Certified Standing Orders which provided for deemed leaving of services by a workman on his own accord if he remained absent without leave or in excess of leave originally sanctioned or subsequently extended for more than 13 consecutive days. There is no evidence that the employer had sent to the workman any letter or notice asking him to join the duties. The employer's witness Shri Rajendranath Mishra has stated in his deposition that he could not send any letter to the workman because he had not left the address of his native place. Even if it is presumed that this statement of the witness is correct, it does not mean that the employer could not have sent any letter at the local address of the workman. It is not the case of the employer that they did not know the local address of the workman. To show the bonafides the employer ought to have sent the letter or notice at the local address of the workman. However, the employer did not do so. There is also no evidence to show that the employer had held any enquiry before the services of the workman were terminated. Infact the employer's witness has admitted in his cross that no chargesheet was issued to the workman nor any enquiry was held. The employer's witness has admitted in his deposition that the workman had met him on 31-7-92 alongwith the leave application and the medical certificate. But he has not stated that any opportunity was given to him of personal hearing or was given any opportunity to explain his absence. On the contrary the evidence of the employer's witness shows that the employer has taken contradictory stand as far as the termination of service of the workman is concerned. At one point he has stated that he told the workman when he met him that since no intimation was received from him it was presumed that he had left the services as per the Certified Standing Orders and thus abandoned his services, while at another point he has stated that he told the workman that since the Mandovi Bridge was thrown open to the public on 23-7-92, his services were not required. Thus it can be seen that two different reasons are given by the employer for terminating the services of the workman. Even in the case of abandonment of service by a workman, it is a settled law as held by the Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co., reported in 1996 I CLR 172 that the employer cannot terminate the services of a workman without holding a domestic enquiry and proving the same in the enquiry. In the present case the workman had produced the medical certificate to prove that he was sick. It is the case of the employer that it is a false certificate. However, no opportunity was given to the workman to prove that he was really sick and that the certificate which he had produced is the genuine certificate. In the light of what is discussed above I hold that there is violation of principles of natural justice in terminating the services of the workman as per the provisions of the Certified Standing Orders and hence the termination is illegal and bad in law.

15. The workman has contended that termination of his service amounts to retrenchment and since the employer did not comply with the provisions of Sec. 25F and also with the provisions of Sec. 25(G) of the Industrial Disputes Act 1947, the termination is illegal and bad in law. The contention of the employer on the other hand is that since the services of the workman stood terminated in terms of the provisions of clause L-2-12 of the Certified Standing Orders, the question of complying with the provisions of Sec. 25F did not arise. "Retrenchment" has been defined under Sec. 2(oo) of the Indutrial Disputes Act, 1947 as follows:

(oo) "Retrenchment" means the termination by the employer of the service of a workman for any reason

whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superanuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health"

In the present case there is no specific letter of termination of services of the workman, but the termination is in terms of clause L-2-12 of the Certified Standing Orders of the employer which states that any workman who remains absent from duty without leave or in excess of leave originally sanctioned or subsequently extended for more than 13 days, he shall be deemed to have left the services of the corporation on his own accord, without any notice, thereby terminating his contract of service with the corporation and his name will accordingly be struck of the rolls. It is an admitted fact that no enquiry was conducted against the workman. It is evident that the services of the workman were not terminated by way of disciplinary action but it was presumed that he had left the services of his own and his name was struck of the muster roll. The case of the workman also does not fall within the exceptions laid down in Sec. 2(oo) of the Industrial Disputes Act, 1947. The High Court of Punjab and Hariyana in the case of Roop Narayan Shukla v/s The Learned Presiding Officer, Industrial Tribunal, Hariyana, Faridabad and another reported in 197 II CLR 279 has held that the termination of employment on the ground of absence from duty for a specific period as per the Certified Standing Orders would be retrenchment in terms of Sec. 2(oo) of the Industrial Disputes Act, 1947. In the said case the Petitioner Roop Narain Shukla had submitted that since his name was struck off, it was a case of retrenchment and it was submitted on behalf of the respondent company that since the termination of employment was as per the Standing Orders, it amounted to termination as per service contract and therefore compliance of Sec. 25F of the Industrial Disputes Act, 1947 was not necessary. The company had advanced similar arguments as advanced by the employer in the present case. The High Court however dis-agreed and held that the termination amounted to retrenchment. This decision of the Punjab and Hariyana High Court is based on the judgment of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. v/s Shambhu Nath Mukherji and others reported in 1997 LIC 1695. In that case the Supreme Court has held that striking of name of a workman from muster roll by the management on the ground of absence for a specific period provided under Standing Orders amounts to retrenchment within the meaning of Sec. 2(oo) of the I. D. Act, 1947. In the case of D. K. Yadav (supra) same issue was involved as in the present case. In that case also the services of the workman were terminated on the ground that he had absented from duty for more than 8 days without prior permission or prior information or intimation and that therefore, in terms of clause 12(2)(iv) of the Certified Standing Orders, the workman was deemed to have left the services of the company on his own and thus he lost his lien on appointment. The Supreme Court on considering its earlier judgments held that the definition of "retrenchment" in Sec. 2(oo) is a comprehensive one intended to cover any action of the management to put an end to employment of an employee for any reason whatsoever. The above decisions squarely apply to the present case. I, therefore hold that the termination of the services of the workman in terms of clause L-2-12 of the Certified Standing Orders of the employer amounts to retrenchment as defined in Sec. 2(oo) of the Industrial Disputes Act, 1947.

16. Section 25F of the Industrial Disputes Act, 1947, lays down the procedure for retrenchment. As per this provision, the services of a workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days wages per each completed year of continuous service, or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25B(2) of the Industrial Disputes Act defines continuous service. It states that a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in case of workman employed below ground in a mine and 240 days in any other case. In the present case the workman has stated in his deposition that he was employed with the employer since 1-1-1988 and that initially he worked as a helper and thereafter as a Belder. He has stated that he worked continuously from 1-1-1988 till his services were terminated. The employer's witness Shri Rajendranath Mishra, the Dy. Project Manager, has also stated in his deposition that the workman was working at the Mandovi Bridge, Panaji, in the year 1988, and that he worked under him for a period from September 1991 to 27-6-92. There is no evidence that the workman was given any breaks. This being the case the provisions of Sec. 25F of the Industrial Disputes Act, 1947 are applicable to the workman. The employer's witness has admitted in his cross-examination that the workman was not given one month's notice or retrenchment compensation, because it was not required. Infact the employer's case is that the question of complying with

the provisions of Sec. 25F did not arise because the workman's service stood terminated in terms of Certified Standing Orders of the employer. Therefore admittedly there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947 from the employer. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal, Haryana and others reported in AIR 1979 SC 170 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. In the present case, since there is no compliance of the provisions of Sec. 25F of the I. D. Act, 1947 from the employer, the termination of service of the workman becomes illegal, invalid and inoperative on this ground also. I, therefore, hold that the termination of service of the workman is illegal and unjustified.

17. The workman has contended that there is violation also of the provisions of the Sec. 25 G of the Industrial Disputes Act, 1947 from the employer. This section lays down the principle of "last come first go" when any workman is to be retrenched. Firstly it is not the case of the employer that the services of the workman were retrenched. Secondly no evidence has been led by the workman to show that the above principle laid down in Sec. 25G has been violated. I, therefore hold that the workman has failed to prove that the employer has violated the provisions of Sec. 25G of the Industrial Disputes Act, 1947. In the circumstances I answer the issue Nos. 1, 2, 2 and 5 accordingly.

18. *Issue No. 6:* This issue pertains to the relief to be granted to the workman. It has been held by me that termination of service of the workman is illegal and unjustified. The ordinary rule is that when the order of termination of service is held to be illegal and unjustified, the workman should be reinstated in service with full back wages unless there are reasons which do not warranty reinstatement or full back wages. In the present case there is no evidence on record to show that the workman was gainfully employed from the date of termination of his service or that his past conduct was not good. However, the facts in the present case show that the workman was also responsible for termination of his services. It is the case of the workman that he fell sick from 25-6-92 for nearly a month and therefore he could not join the duties. The workman has produced the medical certificate issued by the doctor dated 28-7-92 at Exb. W-1 colly. The employer's contention is that it is a false certificate. Even if it is presumed for a moment that the workman was really sick, it does not mean that the workman was absolved from his duty or responsibility to inform the employer of his sickness and his consequent absence from duties. Nothing prevented the workman from intimating or informing the employer that he is not in a position to report for work because of his sickness and ask for the extension of leave. There is no evidence that the workman had done so. The Supreme Court in the case of D. K. Yadav (supra) granted 50% of the back wages to the workman on the ground that the workman was equally to be blamed for termination of his services. In that case also the services of the workman were terminated in terms of the Certified Standing Orders which provided for termination of the workman who remained absent from duty for more than 8 days. Besides, the records in the present case show that the workman was also responsible for delay in the proceedings as on many occasions the case had to be adjourned at his request on some ground or the other. In the circumstances I am of the view that it is just proper to reinstate the workman in service with 50% of the back wages and not the full wages. I, therefore hold that the workman is entitled to reinstatement in service with 50% of the back wages from the date of termination of his service with continuity in service.

Hence, I pass the following order.

ORDER

It is hereby held that the action of the management of the employer M/s Uttar Pradesh State Bridge Corporation Ltd., New Mandovi Bridge site, Panaji, in terminating the services of the workman Shri Sahibjan w.e.f. 31-7-92 is illegal and unjustified. The workman Shri Sahibjan is ordered to be reinstated in service with 50% of the back wages from the date of termination of his services with continuity in service.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/5234

The following Award dated 27-9-1999 in Reference No. IT/112/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex Officio Joint Secretary.

Panaji, 22nd October, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/112/94

Shri Ulhas N. Naik,
Patne, Gannem,
Ponda-Goa — Workman/Party I

v/s

M/s Korde Electric Control,
Mahalaxmi Shopping Complex,
Ponda-Goa. — Employer/Party II

Workman/Party I represented by Adv. Shri P. B. Devari.

Employer/Party II represented by Adv. Shri B. G. Kamat.

Panaji, dated: 27-9-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 15-12-94 bearing No. 28/50/94-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Korde Electric Control, Ponda-Goa, in terminating the services of their workman Shri Ulhas N. Naik, Radio, TV Technician, with efect from 17-8-1993 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/112/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman-Party I (for short, "workman") filed his statement of claim at Exb.5. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer-Party II (for short, "employer") with effect from 1-4-91 as a Radio-TV Technician and he worked continuously till 17-8-93 on which date his services were terminated. That at the time of termination of his service the employer did not follow the provisions of Sec. 25FFF of the Industrial Disputes Act, 1947 and also did not pay his legal dues nor conducted any enquiry. The workman contended that termination of his service by the employer w.e.f. 17-8-93 is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages. The workman also stated that from the date of termination of his service he is unemployed.

3. The employer filed written statement at Exb.6. The employer stated that there was no dispute between the employer and the workman in respect of the termination of the services of the workman and the only dispute was regarding the alleged non payment of his wages for the period from 1-8-93 to 17-8-93 besides other legal dues such as Bonus. The employer stated that on receipt dated 17-5-94 from conciliation officer, Ponda-Goa the employer vide letter dated 19-5-94 asked for a copy of the demand//complaint made by the workman to the conciliation officer and the copy of the said complaint was given to the employer by the conciliation officer. The employer stated that from the said demand/complaint dated 13-5-94 of the workman it can be seen that the workman was at all times seeking assistance/intervention of the conciliation machinery under the Industrial Disputes Act, 1947 in the matter of recovery of his legal dues only. The employer stated that in the circumstances the present reference is incompetent and void and not maintainable. The employer stated that the services of the workman were not terminated but he voluntarily retired from service w.e.f. 17-8-93. The employer denied that any legal dues were payable to the workman or any enquiry was required to be conducted or that the provisions of Sec.25FFF of the Industrial Disputes Act, 1947 were required to be followed. The employer denied that the workman is unemployed or that he is undergoing hardships. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb.7.

4. On the pleadings of the parties, following issues were framed at Exb. 8.

1. Whether Party I proves that Party II terminated his services without complying with the provisions of Sec. 25FFF of the Industrial Disputes Act, 1947 ?
2. Whether Party I proves that the termination of his services by Party II w.e.f. 17-8-93 is illegal and unjustified ?
3. Whether Party II proves that Party I never raised the dispute before Party II or the conciliation officer as regards the termination of his services and hence the reference is not maintainable?
4. Whether Party II proves that Party I voluntarily retired from service w.e.f. 17-8-93?
5. Whether Party I is entitled to any relief?
6. What Award?

5. My findings on the issues are as follows:

Issue No. 1 – In the negative.
Issue No. 2 – In the negative.
Issue No. 3 – In the negative.
Issue No. 4 – In the negative.
Issue No. 5 – Workman is not entitled to any relief.
Issue No. 6 – As per order below.

REASONS

6. *Issue Nos. 1 & 2:* It is the contention of the workman that he was employed with the employer as a radio-TV technician with effect from 1-4-91 and that he continuously worked with the employer till the date of termination of his service. It is the contention of the workman that the employer terminated his services w.e.f. 17-8-93 without complying with the provisions of Sec. 25FFF of the Industrial Disputes Act, 1947 and that the employer also did not conduct any enquiry prior to termination of his service nor paid his legal dues. Therefore according to the workman the termination of his services by the employer is illegal and unjustified. Since the contention of the workman was that the employer did not comply with the Sec. 25FFF of the Industrial Disputes Act, 1947 and that termination of his service is illegal and unjustified, issue Nos. 1 and 2 were framed accordingly casting the burden on the workman to prove the said issues. The workman was given several opportunities to lead evidence in support of his contentions. However, inspite of the opportunities given the workman did not lead any evidence and therefore his evidence was closed on 28-6-99. Since the workman has not led any evidence on issue Nos. 1 and 2, the said issues cannot be answered in favour of the workman. The Allahabad High Court in the case of V. K. Raj Industries v/s Labour Court and others reported in 1981 (29) FLR 194 has held that if a party challenges the validity of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The Bombay High Court, Panaji Bench in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that a party who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In the present case the dispute was raised by the workman that his services were illegally terminated and it is at his request that the reference was made by the Government. Therefore applying the law laid down the Bombay High Court and the Allahabad High Court in the above referred case the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 17-8-93 is illegal and unjustified. As stated earlier inspite of being given several opportunities to lead evidence, the workman failed to do so. Therefore there is no material before me to hold that the action of the employer in terminating the services of the workman is illegal and unjustified. In the circumstances I hold that the workman has failed to prove that the employer terminated his services without complying with the provisions of Sec. 25FFF of the Industrial Disputes Act, 1947 or that the termination of his services by the employer w.e.f. 17-8-93 is illegal and unjustified. I, therefore answer the issue Nos. 1 and 2 in the negative.

7. *Issue No. 3 & 4:* In the written statement the employer had taken the defence that the reference is not maintainable because the workman never raised the dispute before the employer nor the conciliation officer as regards termination of service of the workman. The employer had also taken the defence that the services of the workman were not terminated but he voluntarily retired from the service w.e.f. 17-8-93. Since the burden was on the employer to prove the above issues, the employer ought to have led evidence in support of the contentions made by them. However, inspite of the opportunity given the employer did not lead the evidence in support of the above contentions and therefore I hold that the employer has failed to prove that the reference is not maintainable or that the workman voluntarily retired from service w.e.f. 17-8-93. In the circumstances I answer the issue Nos. 3 and 4 in the negative.

8. *Issue No. 5:* This issue pertains to the granting of relief to the workman. The question of granting any relief to the workman would have arisen if it was held that the termination of service of the workman is illegal and unjustified. However, while deciding the issue Nos. 1 & 2, I have held that the workman has failed to prove that the termination of his services by the employer from 17-8-93 is illegal and unjustified. This being the case, the workman is not entitled to any relief. I therefore hold that the workman is not entitled to any relief and answer this issue accordingly.

In the circumstances I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Korde Electric Control, Ponda-Goa, in terminating the services of their workman Shri Ulhas N. Naik, Radio, TV Technician, with effect from 17-8-1993 is legal and justified. It is hereby further held that the workman Shri Ulhas N. Naik is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/5235

The following Award dated 30-9-1999 in Reference No. IT/14/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolkar, Commissioner, Labour and Ex Officio Joint Secretary.

Panaji, 22nd October, 1999.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/14/90

Shri Vinayak & 9 others,
Rep. by Goa Trade & Commercial
Workers Union
Panaji-Goa — Workman/Party I

v/s

M/s Goa Bottling Co. Pvt. Ltd.,
Arlem Raia,
Salcete-Goa. — Employer/Party II

Workman/Party I represented by Adv. Shri Suhas Naik.

Employer/Party II represented by Adv. Shri B. G. Kamat.

Panaji, dated: 30-9-1999

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 11-4-90 bearing No. 28/61/88-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the demand raised by the Goa Trade & Commercial Workers' Union with the management of M/s Goa Bottling Company Private Limited for minimum Rs. 35/- to be paid per day, weekly offs, industrial holidays and two sets of uniforms to the following workpersons with effect from 25-10-1987 is justified ?

1. Shri Vinayak Naik
2. Shri Ramchandra Naik
3. Shri Shamba Surlekar
4. Shri Uttam Naik
5. Shri Francis Goankar
6. Shri Pradeep Naik
7. Shri Ramakant Naik
8. Mrs. Rosaline Cardoze
9. Mrs. Pedrine Colaco
10. Mrs. Razatte Gaonkar.

If not, what should be the extent of relief and from what date?"

2. On receipt of the reference a case was registered under No. IT/14/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman-Party I (for short, "Union") filed his statement of claim at Exb.2. The facts of the case in brief as pleaded by the union are that the Employer-Party II (for short, "employer") manufacture leading brand of soft drinks and sodas like Limca, Thums-Up, Rim-Zim, Gold Spot, Maaza, Bislery Soda, etc., having wide demand in Goa and outside Goa. That the employer-company works in one shift but during peak season it works in two shifts and above 30 to 40 trucks are loaded and unloaded daily carrying about 500 to 600 boxes. That the workmen who are the parties to the present reference (for short, "workmen") are directly employed by the employer and they have put in several years of service. That the said workmen work as "loaders/unloaders". That the loaders/unloaders who are directly employed by the employer-company were paid Rs. 1200/- p.m. and they enjoyed various other facilities and benefits but the workmen employed by the employer-company were denied the said wages and benefits though they do the same type of work as done by the other loaders/unloaders. That the employer paid to the workmen wages at the rate of Rs. 15/- per day and did not give any other benefits and though the cost of living rose tremendously the wages of the workmen remained static. That the workmen have been doing the work as loaders by using their own clothes which get dirty and sometimes they are torn. That this being the case the workmen are entitled to get from the employer two sets of uniform. The union stated that the demands raised with the employer-company for the payment of Minimum Wages of Rs. 35/- per day and other benefits such as weekly offs, industrial holidays and two sets of uniforms w.e.f. 25-10-87 is legal, fair, proper and justified. The union therefore pray that the above demands raised by the union on behalf of the workmen be granted w.e.f. 25-10-87.

3. The employer filed written statement at Exb.4 denying the claim of the union. The employer stated that the Jt. Secretary of the Union has no authority to sign the statement of claim or to represent the workers. The employer denied that 30 to 40 trucks are loaded/unloaded daily as contended by the union. The employer denied that the workman had put in several years of service with the employer-company. The employer stated that on account of temporary increase in work the workmen were engaged as loaders/unloaders in November 1986 to work till 24th January 1987 and subsequently they were again engaged temporarily from March 1987 to 9th June 1987 and from 1st August 1987 to 21st October 1987.The employer stated that none of the workmen were under obligation to come for work everyday or to work for the full day and the total attendance of the workmen is between 137 and half days minimum to 204 days maximum during the intermittent temporary employment from November 1986 till 26th October 1987. The employer stated that there was no obligation on them to give any work to any of the workmen nor the workmen were bound to accept the work given to them as the relationship between the employer-company and the workmen was purely of temporary nature. The employer denies that the loaders//unloaders were paid Rs. 1200/- p. m. as wages or that they were being given benefits as claimed by the union. The employer stated that the temporary employment of the workmen came

to an end from 27th October, 1987 on account of completion of temporary work for which the said workmen were engaged and therefore the question of adjudicating the demands does not survive. The employer denied that the union or the workmen are entitled to any relief as prayed for and hence the reference is liable to be rejected. Thereafter the union filed rejoinder at Exb.4.

4. On the pleadings of the parties, following issues were framed at Exb. 5.

1. Does Party No. I prove that the Jt. Secretary of the Goa Trade and Commercial Workers Union has a Locus Standi to sponsor this dispute on behalf of the workers?

2. Does Party No. I prove that 10 workers named in the reference are in the employment of Party No. II for several years?

3. If yes, is Party No. I entitled to get Rs. 35/- per day, weekly offs, industrial holidays and two sets of uniforms?

4. What relief to Party No. I if any?

5. What award or order?

5. My findings on the issues are as follows:

Issue No. 1 – In the negative.
Issue No. 2 – In the negative.
Issue No. 3 – In the negative.
Issue No. 4 – The workmen are not entitled to any relief.
Issue No. 5 – As per order below.

REASONS

6. *Issue Nos. 1, 2, 3 & 4:* In the present case the reference of the dispute was made by the Government at the request of the union. On the pleadings of the parties issues were framed and the burden was cast on the union to prove the issue Nos. 1, 2, 3 and 4. The union was given several opportunities to lead evidence and prove the above issues. Since inspite of opportunities given the union did not lead any evidence, the evidence of the union was closed on 30-7-99 and thereafter the case was fixed for employer's evidence. However, the employer also did not lead any evidence in the matter. The Allahabad High Court in the case of V. K. Raj Industries v/s Labour Court and Others reported in 1981 (29) FLR 194 has held that if the workman fails to appear or to file written statement or to produce evidence the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any relief. The Bombay High Court, Panaji Bench in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead evidence is on the party who is making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court, further held that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. Therefore applying the law laid down by the Bombay and the Allahabad High Court in the above referred cases the burden was on the union to prove the issue Nos. 1 to 4. As stated earlier the union did not lead any evidence in the matter inspite of having been given several opportunities. This being the case the issue Nos. 1 to 4 cannot be answered in favour of the union and I hold that the union has failed to prove the said issues. In the absence of any evidence the reference cannot be answered in favour of the union. In the circumstances I answer the issue Nos. 1, 2, and 3 in the negative and as regards the issue No. 4 I hold that the workmen are not entitled to any relief.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the demand raised by the Goa Trade & Commercial Workers' Union with the management of M/s Goa Bottling Company Private Limited for minimum Rs. 35/- to be paid per day, weekly offs, industrial holidays and two sets of uniforms to the workmen Shri Vinayak Naik, Shri Ramchandra Naik, Shri Shamba Surlekar, Shri Uttam Naik, Shri Francis Gaonkar, Shri Pradeep Naik, Shri Ramakant Naik, Mrs. Rosaline Cardoze, Mrs. Pedrine Colaco, Mrs. Razatte Gaonkar with effect from 25-10-1987 is not justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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